

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDREW D. UJDAK,

Defendant.

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Case No. 1:03-CR-136

Hon. Richard Alan Enslen

**ORDER**

Defendant Andrew D. Ujdak has moved this Court for relief from his sentence of imprisonment and, more particularly, to receive credit for time served as to a separate sentence of imprisonment (for bank fraud) which was imposed in the Northern District of Indiana. Defendant seeks a sentencing credit of five months and ten days pursuant to Federal Rule of Criminal Procedure 52(b). The United States of America has opposed the relief sought.

In *United States v. Frady*, 456 U.S. 152, 164 (1982), the United States Supreme Court clarified that the “plain error” provision of Rule 52 applies only on direct review and appeal and does not provide a remedy for collateral attacks. *See also Gilbert v. Parke*, 763 F.2d 821, 825-26 (6th Cir. 1985) (following *Frady*); Fed. R. Crim. P. 35(a) (requiring correction motions to be filed within seven days of sentencing).

It remains true, as mentioned in the United States’ Response, that Defendant may seek collateral relief pursuant to 28 U.S.C. § 2241 regarding the execution of his sentence. *See, e.g., McClain v. Bureau of Prisons*, 9 F.3d 503, 504 (6th Cir. 1993). However, a section 2241 petition must be filed in the district having jurisdiction over Defendant’s custodian. *United States v.*

*Peterman*, 249 F.3d 458, 461 (6th Cir. 2001); *Charles v. Chandler*, 180 F.3d 753, 755-56 (6th Cir. 1999). Because this Court lacks jurisdiction over Defendant's custodian (Defendant currently being incarcerated in Terre Haute, Indiana), a section 2241 petition is outside the Court's jurisdiction.

**THEREFORE, IT IS HEREBY ORDERED** that Defendant Andrew D. Ujdak's Motion to Adjust Sentence pursuant to Rule 52 (Dkt. No. 110) is **DENIED**.

DATED in Kalamazoo, MI:  
October 10, 2007

/s/ Richard Alan Enslen  
RICHARD ALAN ENSLEN  
SENIOR UNITED STATES DISTRICT JUDGE